

### REMARKS

Claims 1-3 are pending in the application. Claim 1 is amended. No new matter is presented. The above remarks are considered by Applicants to overcome each objection and rejection raised by the Examiner and to place the application in condition for allowance. An early Notice of Allowance is therefore requested.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Raymond (Patent No. 5,775,331). The Examiner takes the position that Gonzalez discloses all the features recited in claims 1-3. Applicants respectfully disagree.

Raymond is directed to an apparatus and method for stimulating and locating a nerve. Raymond discloses a stimulating probe having an array of electrodes, an automatic control means and a response detecting means. The response feedback is analyzed according to an electrode selecting algorithm so that ongoing stimulation is restricted to a subset of the array which produces a criterion response with the least magnitude of stimulation.

It should be noted that Raymond is directed to a device and method for finding an intact nerve. As a result, Raymond does not disclose a device or method for handling diseased tissue. Raymond discloses that the intact nerves can be found by corresponding stimulation in that a series of electrodes are activated in a target area by means of pre-selected algorithm. These electrodes are successful in stimulating the nerve and the region of the target area in which a nerve is located are determined on the basis of the automatic evaluation of the responses of the stimulated nerves. Raymond does not teach or suggest that a diseased tissue is deliberately elected. In contrast to the claimed invention, Raymond discloses a solution of optical excitation of a nerve that is to be located.

In addition, the solution disclosed by Raymond is provided for therapeutic treatment and not for surgical treatment. (See Column 5, Line 8 – Column 6 Line 60). Raymond further discloses a permanent stimulation of the nerves through the implantation of electrodes in body tissue. As a result, the successful stimulation is displayed by means of a monitor and the positive outcome of the stimulation is displayed and changes are made known. Thus, it is respectfully submitted that Raymond fails to teach or suggest a device or a method that is used to select and/or remove pathologically altered tissue. In the claimed invention, the

pathologically altered tissue is distinguished and removed from healthy tissue through the evaluation of response signals.

The claimed invention provides a probe that is positioned in the diseased tissue. The tissue selection is then started and proceeds continuously or iteratively. In contrast to Raymond, the solution claimed by the present invention allows the selected tissue to be excised.


More specifically, the present invention provides a probe that is positioned in the region of the pathological change and tissue selection is activated in that different electric and/or electromagnetic stimulus signals which can be pre-adjusted or modulated are applied to the tissue. By evaluating the responses to these stimuli, the healthy tissue can be distinguished from the pathologically altered tissue. If no stimulus response or an unexpected stimulus response is received, the appropriate treatment is carried out at the selected location by means of the same probe. Otherwise the probe is repositioned and the tissue selection is activated anew.

The present invention for tissue-selective treatment makes it possible to separate determined pathologically altered tissue parts from the rest of the tissue parts to fragment these pathologically altered tissue parts and/or remove them by suction without damaging the healthy tissue parts. It is respectfully submitted that Raymond fails to teach or suggest distinguishing the healthy tissue parts from the pathologically changed tissue parts by evaluating the responses to these stimuli and in the case of an expected stimulus response, identifying healthy tissue, repositioning the probe and activating the tissue selection again, or when the stimulus response identifying pathologically altered tissue is absent or unexpected, carrying out the corresponding to a surgical treatment by the same probe at the selected site. Therefore, Applicants request the withdrawal of the rejection of claim 1 under 35 U.S.C. 102(b).

Claims 2 and 3 are dependent upon claim 1. Therefore, it is submitted that claims 2 and 3 recite patentable subject matter for at least the reasons mentioned above. Accordingly, Applicants request the withdrawal of the rejection of claims 2 and 3 under 35 U.S.C. 102(b).

In view of the above remarks, Applicants submit that claims 1-3 recite subject matter that is neither taught nor suggested by the applied references. Thus, for the reasons presented above, claims 1-3 are believed by Applicants to define patentable subject matter and should be passed to issue at the earliest possible time. A Notice of Allowance is requested.

Respectfully submitted,

 Reg. No. 50,900  
Gerald H. Kiel  
Reg. No. 25,116

REED SMITH LLP  
599 Lexington Avenue  
New York, NY 10022  
(P) 212-521-5400  
Attorney for Applicants